IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 25733 of 2006(L)

PETITIONER:

TOP CONSTRUCTIONS, TOPS MANOR,
PANAVELI P.O., KOTTARAKKARA,
REPRESENTED BY MANAGING PARTNER.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SMT.RESMI G. NAIR
SRI.P.K.VIJAYAMOHANAN

RESPONDENTS:
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1. THE SUPERINTENDING ENGINEER,
HARBOUR ENGINEERING, NORTH CIRCLE,
CHAKKORATHUKULAM, ELANJIPALAM P.O.,
KOZHIKODE-6.

2. THE CHIEF ENGINEER, HARBOUR
ENGINEERING DEPARTMENT, KAMALESWARAM,
MANACAUD P.O., THIRUVANANTHAPURAM-9.

3. THE GOVERNMENT OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
PORTS DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOSTAT COPY OF THE AGREEMENT NO. HED (NC) 1/94 DATED 3.1.1995 BETWEEN THE PETITIONER AND 1ST RESPONDENT.

EXT.P2 PHOTOCOPY OF PROHIBITORY ORDER DATED 27.8.1997 OF RDO, THALASSERY.

EXT.P3 PHOTOCOPY OF G.O.(RT) NO. 113/2003/F & PD DATED 7.3.2003

EXT.P4 PHOTOCOPY OF LETTER NO. D2/2679/94/SE DATED 5.6.2006 OF R1.

EXT.P5 PHOTOCOPY OF PETITIONER'S EXPLANATION DATED 14.6.2006

EXT.P6 PHOTOCOPY OF LETTER DATED 20.6.2006 SENT TO R1 BY THE PETITIONER.

EXT.P7 PHOTOCOPY OF NOTICE NO. D2/2629/94/SE DATED 26.6.2000 OF R1

EXT.P8 PHOTOCOPY OF ORDER DATED 27.6.2006 OF THE FIRST RESPONDENT.

EXT.P9 PHOTOCOPY OF PETITIONER'S REPRESENTATION DATED 15.7.2006 TO THE 2ND RESPONDENT.

EXT.P10 PHOTOCOPY OF PETITIONER'S REPRESENTATION DATED 3.8.2006 TO THE 3RD RESPONDENT.

EXT.P11 PHOTOCOPY OF THE TENDER NOTICE NO. D/1850/2006/SE DATED 31.8.2006.

ANNEXURE A. PHOTOCOPY OF STATEMENT REGARDING QUANTITY OF WORKS EXECUTED UNDER EXT.P1 AGREEMENT.

FIRST RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF THE G.O.(Rt.) NO. 113/03/F& PD DATED 7.3.2003

EXT.R2(b) TRUE COPY OF THE AGREEMENT DATED 25.3.2003

EXT.R1(c) TRUE COPY OF THE XTH SUPPLEMENTARY AGREEMENT DATED 23.8.2005

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 25733 OF 2006

Dated this the 13th day of February, 2007

JUDGMENT

Heard senior counsel Sri. M.K. Damodaran appearing for the petitioner and Government Pleader for the respondents. Petitioner was awarded a contract for construction of Azheekal Cargo Harbour and the agreement was executed on 3.1.1995. Even though the contract originally awarded was for Rs. 9.4 crores the scope of the contract was later increased systematically and the contract amount went to Rs. 20 crores. According to the petitioner time was extended for completion of work till 15.8.2006 and even before expiry of time, respondents cancelled the contract on 27.6.2006. Government Pleader submitted that petitioner abandoned the work, though they completed around 80% of the work and on account of abandonment of the work, loss is caused to the Government. Petitioner also admits that around 20% of the work which remains yet to be done is construction of 250 metres of wall with sand and rubble. Even though contract was cancelled on 27.6.2006, respondents have not awarded fresh contract to anyone but are only

processing the tenders said to have been received. Counsel for the petitioner submitted that petitioner has mobilised materials and equipments and petitioner will be able to complete the work faster than any other contractor. In the circumstances, and since fresh contract is not awarded, I feel, petitioner can be given one more opportunity, but on strict terms. The work completed by the petitioner will be evaluated by respondents 1 and 2 and petitioner will be informed of any modification or rectification required for the work already completed. Petitioner is directed to give an undertaking to the second respondent undertaking to modify or rectify the work already done and complete the balance work also within six months from now. In view of the difficulties for work during monsoon in between petitioner is given time to complete the work till 15th October, 2007. No recovery should be proceeded against the petitioner for the loss sustained by the Government and the security furnished by the petitioner will be kept in force. However, no payment shall be made to the petitioner until full completion of work, which has to be certified by concerned authority. Second respondent is directed to issue proceedings to the petitioner

within two weeks from the date of production of a copy of this judgment after conducting inspection and verification of work done for the petitioner to carry out rectification or modification to make up the damages, if any sustained, and for continuation of work which petitioner is free to commence after second respondent issues communication as above.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge